

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

JAMES FORTUNE,

Plaintiff,

- against -

ROCK AND BREWS HOLDINGS, INC.

Defendant.

Docket No. 5:20-cv-00534

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff James Fortune (“Fortune” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Rock and Brews Holdings, Inc. (“Rock and Brews” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of English rock band Led Zeppelin, owned and registered by Fortune, a professional photographer. Accordingly, Fortune seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Upon information and belief, this Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in Texas.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Fortune is a professional photographer in the business of licensing his photographs for a fee having a usual place of business at 12420 N. Oakes Drive, Ashland, VA 23005.

6. Upon information and belief, Rock and Brews is a business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 1 AT&T Center Parkway, San Antonio, Texas 78219. At all times material hereto, Rock and Brews has owned and operated a website at the URL: [www.RockandBrews.com](http://www.RockandBrews.com) (the “Website”).

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff’s Ownership of the Photograph**

7. Fortune photographed English rock band Led Zeppelin (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Fortune is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with United States Copyright Office and was given Copyright Registration Number VA 1-292-295.

#### **B. Defendant’s Infringing Activities**

10. Rock and Brews ran an article on the Website entitled *Rock & Baggin’s Happy Hobbit Day!* See: <https://www.rockandbrews.com/about-us/news-room/2015/september/rock-baggins-happy-hobbit-day/>. A true and correct copy of the article and a screenshot of the Photograph on the Website are attached hereto as Exhibit B.

11. Rock and Brews did not license the Photograph from Plaintiff for its Website, nor did Rock and Brews have Plaintiff's permission or consent to publish the Photograph on its Website.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)**  
**(17 U.S.C. §§ 106, 501)**

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Rock and Brews infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Rock and Brews is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Rock and Brews have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Rock and Brews be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
April 29, 2020

LIEBOWITZ LAW FIRM, PLLC  
By: /s/Richard Liebowitz  
Richard P. Liebowitz  
11 Sunrise Plaza, Suite 305

Valley Stream, NY 11580  
Tel: (516) 233-1660  
RL@LiebowitzLawFirm.com

*Attorneys for Plaintiff James Fortune*